

APPEAL NO. 032893  
FILED DECEMBER 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 1, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (carrier) is not entitled to suspend the respondent's (claimant) impairment income benefits (IIBs) to recoup the previous overpayment of \$4,060.00. The carrier appealed, arguing that the determination is error and that the hearing officer misapplied the provisions of the 1989 Act as well as the applicable Texas Workers' Compensation Commission (Commission) rules and the prior precedent. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. At issue was whether the carrier is entitled to suspend the claimant's IIBs to recoup the previous overpayment of \$4,060.00 of temporary income benefits (TIBs). It is undisputed that the overpayment in issue was made pursuant to an interlocutory order and was not made voluntarily by the carrier.

The hearing officer found that the evidence was insufficient to establish that the carrier is entitled to suspend the claimant's IIBs as a result of an overpayment of TIBs which were paid pursuant to an interlocutory order. We disagree.

Section 410.209 provides that the subsequent injury fund (SIF) shall reimburse an insurance carrier for any overpayments of benefits made under an interlocutory order or decision if that order or decision is reversed or modified by final arbitration, order, or decision of the Commission or a court. Further, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §126.7(j) (Rule 126.7(j)) provides:

A carrier which makes an unrecoupable overpayment pursuant to an interlocutory order may be eligible for reimbursement from the [SIF]. An unrecoupable overpayment for the purpose of reimbursement from the [SIF] only includes those benefits that were overpaid by the carrier pursuant to an interlocutory order which were not owed to the employee and which were not recoverable or convertible to IIBs.

Additionally, Rule 116.11(b) defines an unrecoupable overpayment of income benefits for the purpose of reimbursement from the SIF as including only those benefits that were overpaid by the carrier pursuant to an interlocutory order or decision and which were finally determined to be not owed and which, in the case of an overpayment of income benefits to the employee, were not recoverable or convertible from other

income benefits. Rule 126.1(4) defines on unrecoupable overpayment as the amount of benefits paid by the carrier to the claimant which were not owed and which were not recoverable or convertible from other income benefits.

The carrier cites previous Appeals Panel decisions which allowed the carrier to recoup an overpayment of TIBs from future payments of IIBs. A distinction was made in Texas Workers' Compensation Commission Appeal No. 951962, decided January 2, 1996, concerning recoupment between income replacement benefits (TIBs and supplemental income benefits) as opposed to IIBs. In Texas Workers' Compensation Commission Appeal No. 030045, decided March 3, 2003, the Appeals Panel held that it was error for the hearing officer to determine that there is no provision in the 1989 Act or in the Commission's rules which provides for the carrier's right to offset or recoup the overpayment of benefits when a disability determination in a prior CCH had been reversed resulting in the overpayment. Although in that case, the error was found to be harmless since the claimant had already received his full entitlement to IIBs, and the carrier had no source from which it could recoup the overpayment.

Based on the foregoing, the hearing officer's decision is reversed, and a new decision rendered that the carrier is entitled to suspend the claimant's IIBs to recoup the previous overpayment of \$4,060.00.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge